

# ARKANSAS SUPREME COURT

No. CR 05-1062

NOT DESIGNATED FOR PUBLICATION

JERRY L. HERRON  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered November 2, 2006

*PRO SE* PETITION FOR REHEARING  
[APPEAL FROM THE CIRCUIT  
COURT OF ARKANSAS COUNTY,  
NORTHERN DISTRICT, CR 2002-74,  
HON. DAVID G. HENRY, JUDGE]

PETITION FOR REHEARING DENIED.

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## PER CURIAM

Appellant Jerry L. Herron was convicted of first-degree murder and sentenced to life imprisonment. This court affirmed the judgment. *Herron v. State*, 362 Ark. 446, \_\_\_ S.W.3d \_\_\_ (2005). Appellant timely filed in the trial court a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. Appellant then appealed the order and this court affirmed the dismissal of the petition by the trial court because appellant's petition was not verified. *Herron v. State*, CR 05-1062 (Ark. September 21, 2006) (*per curiam*). Appellant now brings this petition for rehearing, requesting this court to reconsider our opinion and remand to the circuit court to permit appellant to file a verified petition.

Rule 2-3(g) of the Rules of the Arkansas Supreme Court provides that a petition for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain and not to repeat arguments already considered and rejected by this court. The petition must cite to facts the appellant contends were overlooked and provide references to the abstract or

addendum as required by Ark. Sup. Ct. R. 2-3(h). Here, appellant contends that he had no way of knowing that he was not in compliance, that Rule 37.1 required the circuit clerk to reject his petition, and that appellant would have then had opportunity to cure the deficiencies and file a compliant petition.

Appellant has not cited any facts that were overlooked by this court. Rule 37.1 clearly states the verification requirement. All litigants, including those who proceed *pro se*, must bear responsibility for conforming to the rules of procedure. *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (*per curiam*); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*). See also *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (*per curiam*). Appellant was solely responsible for filing a conforming petition.

Appellant argues that Rule 37.1(e), in the applicable version of the rule, directed that the petition be rejected by the circuit clerk and the trial court.<sup>1</sup> Rule 37.1(e) required that non-compliant petitions not be filed without leave of the court. However, this court has held that the verification requirement is of such importance that the trial court may not consider the merits of a petition that is not compliant in that respect. See *Shaw v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (June 30, 2005). As we stated in our previous opinion, although the trial court did not deny the petition based upon its lack of verification, the trial court could not consider the issues in the petition. See also *id.* Even were the circuit clerk obliged to reject a non-compliant petition, there was no obligation to allow appellant to cure a defective petition. Rule 37.1 provided adequate notice of the requirement to

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<sup>1</sup> Appellant filed his petition on August 10, 2005. The current version of Rule 37.1 was effective on March 1, 2006.

appellant, and he acknowledges that he prepared the petition personally. Appellant was in the best position to ensure that the petition was in compliance with the requirements of the rule.

Appellant has not brought attention to any fact that was overlooked or any error of law. As there was no mistake of fact or law in our previous opinion, we deny appellant's petition for rehearing.

Petition for rehearing denied.

Gunter, J., not participating.